

## DTSC HISTORIC AND CONTINUING CIRCUMVENTION OF THE BUSINESS AND PROFESSIONS CODE

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**To:** DTSCPublicMeeting@DTSC

**Cc:** Singh, Mike@DTSC

November 15, 2016

Independent Review Panel  
Mr. Gideon Kracov, J.D., Chair  
Mr. Mike Vizzier, Vice Chair,  
Ms. Arezoo Campbell, PhD.  
Department of Toxic Substances Control  
1001 "I" Street, 25th Floor  
P.O. Box 806  
Sacramento, California 95812-0806

Dear Independent Review Panel members:

### INVESTIGATION OF THE HISTORIC AND CONTINUING CIRCUMVENTION OF THE BUSINESS AND PROFESSIONS CODE BY THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL

I request that Independent Review Panel (IRP) undertake to investigate the Department of Toxic Substances Control (DTSC) wrongheaded and long-term circumvention of licensure requirements of the State of California and various implications to the practicing without a license supposed professional work performed by DTSC as well as ancillary issues of "working out of class" with regards to having unlicensed staff with a HAZARDOUS SUBSTANCES SCIENTISTS (HSS) job classification perform certain of the functions that licensed professionals in the ENGINEERING GEOLOGIST (EG) and HAZARDOUS SUBSTANCES ENGINEERS (HSE) job classifications have the statutory responsibility to perform. I have raised objections to this "policy" on numerous occasions. Several "position" papers by DTSC have resulted but the unlicensed practice continues and DTSC continues to staff that can't be licensed and place them in positions---often in a chain of unlicensed management---where they ultimately sign letters expressing opinions on technical content of work plans and reports, etc. of licensed professionals.

"Any technical report submitted to the Department needs to be signed by a registered professional to takes responsibility for its technical content. If a report makes interpretations and derives conclusions from hydrogeological and geochemical data, the Report must be signed by a qualified geologist, registered in the State of California, or professional civil engineer. This is required by California State Law - Business and Professions Code (Geologists and Geophysicists Act, Section 6735 and Professional Engineers Act, Section 6735). Technical reports and memoranda submitted to the DTSC that address hazardous substances investigations and are available for public review must adhere to the legal requirements of the Business and Professions Code. Reports and memoranda signed by licensed professionals must indicate the license number of the professional who signs the document." [Quote from draft guidance on reports and memoranda submitted to DTSC]

The following are some of the case excerpts from the Board of Registration, among a number, that I sent to a previous Deputy Director at DTSC to demonstrate the issue:

"Arlin Brewster

The Board for Geologist and Geophysicists (Board) issued a Citation and Fine of \$2,500 on March 10, 2008 to Mr. Arlin Brewster for violation of section 7872(a) and section 7872(h) of the Business and Professions Code (unlicensed professional practice of geology).

Mr. Brewster prepared a letter report entitled "Justification To Install Two Small-Diameter

Groundwater Monitoring Wells," (Letter Report) dated July 3, 2007 signed as "Arlin W. Brewster, Project Manager," respectively for the property located at Casper Company, 3825 Bancroft Drive, Spring Valley, California (Unauthorized Release #H19606-001). This Letter Report was subsequently submitted to the County of San Diego, Department of Environmental Health on July 23, 2007.

The aforementioned Letter Report signed by Mr. Brewster demonstrates that he practiced geology in the State of California without a California Professional Geologist license. Consequently, Mr. Brewster violated Business and Professions Code section 7872(a) when he engaged in the practice of geology without a license. These violations constitute grounds for disciplinary action under Business and Professions Code section 7872(a) and section 7872(h).

In accordance with section 125.9(d) of the Business and Professions Code, payment of the fine does not constitute admission of the violation charged and represents satisfactory resolution of the matter. Mr. Brewster has paid the fine of \$2,500 and the case was closed on April 11, 2008."

and

"Sean McGoey

The Board for Geologist and Geophysicists (Board) issued a Citation and Fine of \$2,500 on November 13, 2007 to Mr. Sean McGoey for violation of sections 7872(a) and 7872(h) of the Business and Professions Code (unlicensed professional practice of geology).

Mr. McGoey prepared a letter report entitled "Results of a Limited Subsurface Investigation," dated December 13, 2001 (Letter Report) signed as "Sean O. McGoey, R.E.A., Senior Project Environmental Geologist," for Ninyo and Moore. This Letter Report was submitted to the County of San Diego, Department of Environmental Health on April 16, 2007.

The Letter Report signed by Mr. McGoey demonstrates that he practiced geology in the State of California without a California Professional Geologist license. Consequently, Mr. McGoey violated Business and Professions Code section 7872(a) when he engaged in the practice of geology without a license.<sup>1</sup> These violations constitute grounds for disciplinary action under Business and Professions Code section 7872(a) and section 7872(h)."

One could go through DTSC's Envirostor database and find hundreds of examples that would fit the foregoing where DTSC's own unlicensed staff were knowingly assigned by DTSC management to "practice" geology or engineering without the applicable professional license--- by reviewing, commenting or approving geological and engineering "documents", e.g. reports and work plans, prepared by appropriately licensed professionals. It is my belief that the practice began and continued because of generally greater availability of individuals that could not be licensed and the pay differential that existed between the HSS, HSE and EG classes allowed "salary saving" games by DTSC. In other words DTSC's attitude has been that this is a cheap and traditional way to go----why change simply because the Business and Professions Code may be violated?

Examples of ancillary issues: (1) to this day it is difficult/impossible to get a staff person who gets a license as a Professional Geologist transferred into an EG position if he/she has started in an HSS or HSE position---reportedly because due to the license would require a pay increase in the EG position. This of course does not stop DTSC from taking advantage of individual's license while he is in the old, cheaper job classification; (2) having an unlicensed HSS perform the function of a professional engineer or geologist may be tantamount to having them "work out of class."

I ask the IRP to make an investigation of DTSC's longstanding and continuing "hidden policy" of having its unlicensed staff to perform the "same project management" as its licensed staff (or at least staff that could be licensed working under the direct supervision of a licensed supervisor). The statewide public needs to get a complete picture of the potential professional licensure issues within DTSC.

Sincerely,

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